substance, or to affect the rights, duties or liabilities of any persons or body of persons, public or private. The aim rather is to carry out more effectively the original purpose and intention of the laws."

Subsection (2) of section 93 alters substantially the right of inheritance of the lawful wife and children of a person who has contracted another marriage which is void. They have to share the estate of the deceased with the children of a marriage which the law does not recognise as valid. This substantial alteration in the law is contrary to the intention expressed in the Explanatory Statement made at the Bill stage of this enactment.

As has been shown, no ceremony, no formal contract and no customary rites need be proved to establish a Chinese secondary marriage. And this concept having been abolished, by implication, by the Charter in 1961, I do not think that eight years later, in 1969, Parliament intended to include it in the expression "void marriage". In my opinion, the words "child of a void marriage, whether born before or after the commencement of this Act" were taken from section 2 of the English Legitimacy Act of 1959 without any thought or intention of benefiting the children of a so-called Chinese secondary marriage contracted in contravention of either the Ordinance or the Charter.

Lastly, the position of a Chinese married under the Civil Marriage Ordinance, 1940 and of a Chinese married under the Charter is the same in law. Both are forbidden to marry again and have consequently lost their right to take a *t'sip* which right they enjoyed under their personal law. If counsel for the defendants is right in his submission, then it means that an unscrupulous Chinese, lawfully married under the Charter, can today go on contracting or purporting to contract any number of Chinese secondary marriages and upon his dying intestate, the children of these so called Chinese secondary marriages would be deemed to be his legitimate children and entitled to a share in his estate on the ground that they are the children of "void marriages". In my opinion that could never have been the intention of Parliament in enacting subsection (2) of section 93 of the Charter. To construe this subsection in the manner suggested by counsel for the defendants would make nonsense of this law.

All the foregoing considerations compel me to the conclusion that the defendants are not the children of a "void marriage" within the meaning of section 93(2) of the Charter and they are therefore not entitled to a share in the estate of the deceased.

Answer in the negative.

Solicitors: *Ng & Ng; Allen & Gledhill.*

MALAYSIAN REPORTS

YEO KIAN ANN & SON v. RAILWAY ADMINISTRATION

[F.C. (Azmi L.P., Suffian and Ong Hock Sim F.JJ.) March 1, 1973]
[Kuala Lumpur — Federal Court Civil Appeal No. 63 of 1972]

Railway Administration — Requirement of notice by plaintiff or his solicitor before commencement of action — Strict interpretation — Railway Ordinance, 1948, ss. 37 & 77(2).

In the court below ([1973] 1 M.L.J. 43) the plaintiffs, claimed damages against the Railway Administration for loss sustained as a result of a collision between their motor-lorry and a train at a private level crossing. The Railway Administration raised two preliminary objections to the claim (1) that no notice of the claim had been given by the plaintiff or his solicitors as required by section 77(2) of the Railway Ordinance, 1948; (2) that as section 37 of the Railway Ordinance did not impose any liability on the Railway Administration as far as private level crossings were concerned, the Railway Administration was also not obliged to do anything at common law. It appeared that in this case a written notice was served by the solicitors for the insurance company, who were the insurers of the lorry belonging to the plaintiffs. It was held (1) the written notice in this case was not served by the plaintiffs or their solicitors and therefore did not constitute a proper notice as required by section 77(2) of the Railway Ordinance, 1948; (2) although section 37 of the Railway Ordinance is silent as regards the obligation of the Railway Administration towards members of the public, this did not relieve them for their common law obligation to take care.

On appeal the Federal Court allowed the appeal and ordered that the preliminary objection raised by the defendant be dismissed, and that the trial of the action should proceed on its merits.

FEDERAL COURT.

Edgar Joseph Jr. for the appellant.

Morris Edgar and *Albert Lian* for the respondent.

The Federal Court did not deliver a written judgment. The Order made by the Federal Court was as follows:

"This appeal coming on for hearing on 19th day of February 1973 in the presence of Mr. Edgar Joseph (Jr.) of counsel for the appellant abovenamed and Mr. Morris Edgar of counsel for the respondent abovenamed and upon reading the record of appeal filed herein and upon hearing the arguments of counsel as aforesaid for the parties it was ordered that this appeal do stand adjourned to a date to be fixed and the same coming on for hearing this day in the presence of Mr. Edgar Joseph (Jr.) of counsel for the appellant and Mr. Albert Lian of counsel for the respondent it is ordered by consent that this appeal be and is hereby allowed and it is ordered by consent that the preliminary objection raised by the defendant be and is hereby dismissed and it further ordered by consent that the trial of this action should proceed on its merits and it is further ordered by consent that each party should bear its own costs here and in the court below and it is lastly ordered that the sum of $500 (dollars five hundred only) deposited by the appellant in court as security for costs of this appeal be refunded to the appellant.

Given under my hand and the seal of the court this 1st day of March 1973.

E. E. Sim
Chief Registrar,
Federal Court, Malaysia"